

YICK HOE FERROUS STEEL SDN BHD

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v.

TRIBUNAL RAYUAN KASTAM & ORS

HIGH COURT MALAYA, KUALA LUMPUR

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AZIAH ALI J

[ORIGINATING MOTION NO: R1-25-421-2010]

3 DECEMBER 2010

ADMINISTRATIVE LAW: *Judicial remedies - Judicial review - Application to quash decision of 1st respondent - First respondent dismissed applicant's appeal against 2nd respondent - Whether 1st respondent erred in law - Whether applicant required to pay short-paid tax before making said appeal - Customs (Appeal Tribunal) Regulations 2007, reg. 4(1) - Whether said provisions conferred discretion on 1st respondent to hear appeal - Whether court could intervene in the 1st respondent's decision*

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ADMINISTRATIVE LAW: *Judicial review - Judicial review proceedings - Application not made by way of O. 53 Rules of the High Court 1980 - Whether such failure was a fundamental defect - Application for leave made in intitlement - Whether this is proper pleading for leave - Failure to obtain leave for judicial review application - Whether this rendered application for judicial review defective, irregular and an abuse of process - Whether failure resulted in court lacking jurisdiction to hear judicial review application*

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CIVIL PROCEDURE: *Judicial review - High Court - Application made by way of originating motion - Whether contravened O. 53 Rules of the High Court 1980 - Application for leave made in intitlement - Whether this was substitute for proper pleading for leave - Whether leave mandatory in judicial review application - Whether failure resulted in court lacking jurisdiction*

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The applicant made this application for judicial review to quash the decision of the Tribunal *ie*, the 1st respondent. The applicant, an importer of mild steel plates, was allowed by the Pengarah Kastam Negeri Johor *ie*, the 3rd respondent, to claim concession of import duty at 5% under the ASEAN Common Effective Preferential Tariff Scheme for importing steels from Indonesia. However, later the 3rd respondent notified the applicant that it

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- A was not eligible for the 5% concession and demanded the payment of short-paid tax. Dissatisfied, the applicant made an appeal to the Ketua Pengarah Kastam Malaysia *ie*, the 2nd respondent, who rejected the appeal. The applicant then proceeded to appeal to the 1st respondent who ruled that the applicant was required to
- B pay the short-paid tax before it could hear the applicant's appeal as stated in reg. 4(1) Customs (Appeal Tribunal) Regulations 2007 ('the Regulation'). The applicant claimed that the 1st respondent had erred in its decision in refusing to hear its appeal against the 2nd respondent. In this application for judicial review, the
- C respondents raised the following objections: (i) that the application for judicial review should be made pursuant to O. 53 Rules of the High Court 1980 ('RHC') and not by way of originating motion as in this case; and (ii) the applicant had failed to apply for leave before making this application which is a pre-condition for judicial
- D review application.

Held (dismissing the application):

- (1) Order 53 RHC imposed stringent conditions or rules. Failure to comply with the clear provisions of O. 53 RHC was a
- E fundamental defect that was not curable under O. 1A RHC. By commencing this action by way of originating motion, the applicant was evading the mandatory requirements of O. 53 RHC in particular the requirement to first obtain leave. (para 14)
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- (2) The only reference to an application for leave was in the intitulement. The purpose of the intitulement was to give notice to the other party of the nature of the relief sought in order to avoid the opponent being taken by surprise. However
- G it was not a substitute for a proper pleading for leave. This was to be incorporated in the body of the application itself. (para 16)
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- (3) The application for judicial review without first obtaining leave was defective, grossly irregular and an abuse of process. The failure to obtain leave resulted in the court lacking jurisdiction to hear the application for judicial review. (para 17)

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- (4) The applicant had to pay the duties first before its appeal could heard by the 1st respondent. Both the parties are bound by the provision in the Regulation. The provision did not confer any discretion on the 1st respondent to hear an appeal unless the applicant had complied with the pre-condition. Therefore, the 1st respondent had not erred in its decision to dismiss the applicant's appeal. (para 22) A
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- (5) The applicant should have exhausted the appeal process before resorting to the courts. Based on the clear provision of the Regulation, it would be wrong for the court to intervene at this stage, as it would tantamount to interfering with the 1st respondent from hearing the appeal pending before it, and its right under the law to adjudicate the matter. (para 23) C

Case(s) referred to:

- Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 5 CLJ 865 FC (**refd**) D
- Bandar Utama Development Sdn Bhd & Anor v. Lembaga Lebuhraya Malaysia & Anor* [1997] 4 CLJ 725 HC (**refd**)
- Beauford Baru Sdn Bhd v. Gopala Krishnan VK Gopalan* [2002] 3 CLJ 686 HC (**refd**) E
- Cheow Chew Khoon @ Teoh Chew Khoon (Yang Berniaga Sebagai Cathay Hotel) v. Abdul Johari Abdul Rahman* [1995] 4 CLJ 127 CA (**refd**)
- Duli Yang Amat Mulia Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj v. Datuk Captain Hamzah Mohd Noor & Another Appeal* [2009] 4 CLJ 329 FC (**refd**)
- Government of Malaysia v. Jagdis Singh* [1987] 1 CLJ 451; [1987] CLJ (Rep) 110 SC (**refd**) F
- Malaysian International Merchant Bankers Bhd v. Highland Chocolate And Confectionary Sdn Bhd & Anor* [1997] 1 CLJ 480 HC (**refd**)
- Ravindran P. Muthukrishnan v. Malaysian Examinations Council* [1984] 1 CLJ 232; [1984] 1 CLJ (Rep) 320 SC (**refd**) G
- Robin Tang Pang Heng @ Muhammad Rizal Abdullah (mendakwa sebagai pegawai awam di Penang Turf Club) v. Ketua Pengarah Kesatuan Sekerja Malaysia & 1 Lagi (Rayuan Sivil No: 01(f)-8-2009 (P))* (Unreported) FC (**refd**)
- Shaari Sahat & Ors v. Tsuritani (Malaysia) Sdn Bhd (Melaka)* [2002] 2 CLJ 53 HC (**refd**) H
- Subramaniam Vythilingam v. The Human Rights Commission of Malaysia (SUHAKAM) & Ors* [2003] 6 CLJ 175 (**refd**)
- United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin* [2001] 2 CLJ 31 CA (**refd**) I

A Legislation referred to:

Customs Act 1967, ss. 17, 141M, 141W, 143
Customs (Appeal Tribunal) Regulations 2007, reg. 4(1)
Rules of the High Court 1980, O. 1A, O. 2 r. 1, O. 53 rr. 2(1), 3(1),
4(2)

B *For the applicant - J.R. Ravendran; M/s J.R. Ravendran & Assoc*
For the respondents - Suhaila Haron SFC

Reported by Melinda Robert

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JUDGMENT

Aziah Ali J:

D **[1]** The Attorney General raised objections to the applicant's application for judicial review under O. 53 of the Rules of the High Court 1980 ("the RHC") made by way of originating motion seeking the following reliefs (encl. 1):

E (1) an order to set aside or quash the decision of the 1st respondent made *vide* its letter Bil. TRK(K)2-2010 dated 20 July 2010; and

F (2) an order to quash the decision of the 2nd respondent made *vide* its letter KEHE (44) 685/10 Klt (66) dated 12 July 2010, received by the applicant on 19 July 2010;

(3) an order that all further proceedings which relate to the second respondent's decision to be stayed until final disposal by this Honourable Court;

G (4) costs of the application and incidental costs to be paid by the respondents;

(5) such further or other reliefs that this court deems fit.

H **[2]** The relief sought for in prayer (1) is in respect of the decision of the Tribunal, the 1st respondent, made on 20 July 2010 allowing a preliminary objection raised by the 2nd respondent based on the provisions of reg. 4(1) of the Customs (Appeal Tribunal) Regulations 2007 (PU(A) 210/2007) which states as follows:

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Payment of duties or taxes payable pending appeal

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(1) An appeal shall not be heard unless the appellant has made and submitted all the declarations or returns which he was required to make under this Act, the Excise Act 1976, the Sales Tax Act 1972 or the Service Tax Act 1975 **and has paid all the duties and taxes which the Director General has determined to be payable by the appellant.** (emphasis added)

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(2) For the purpose of this regulation, duties or taxes includes penalty, surcharge or any other money.

The Tribunal ruled that the applicant's appeal would not be heard unless the applicant has paid the duty payable (exh. L9).

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[3] The relief sought for in prayer (2) is in respect of the decision of the 2nd respondent made *vide* letter dated 12 July 2010 rejecting the applicant's appeal made through its solicitors *vide* letter dated 20 April 2010 to withdraw the imposition of short-paid tax amounting to RM226,556.32 (exh. L10).

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[4] The grounds for the objections raised by the Attorney General are as follows:

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(a) that this application commenced by way of originating motion contravenes O. 53 of the Rules of the High Court 1980;

(b) that the applicant has not sought leave;

(c) that the applicant has not exhausted the alternative remedy of appeal.

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I allowed the objection and dismissed the application with costs of RM1,000 to the Attorney General.

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Background

[5] The applicant is in the business of importing mild steel plates from Indonesia for sale in the local market. On 18 December 2009 the applicant imported 430 pieces of Hot-Rolled Mild Steel Plate from PT Gunawan Dianjaya Steel, Surabaya, Indonesia. By way of 'Form D' (exh. L3) the applicant was allowed to claim a concession of import duty at 5% under the ASEAN Common Effective Preferential Tariff Scheme (CEPT/FTA 2004).

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- A [6] On 1 March 2010 the 3rd respondent notified the applicant that the applicant is not eligible for the 5% tariff concession under CEPT/FTA and demanded payment of short-paid tax amounting to RM226,556.32. The applicant was requested to respond to the demand within 14 days failing which the applicant would be deemed to have agreed to the demand. The applicant says that it was dissatisfied with the demand and made an appeal to the 2nd respondent through its solicitor's letter dated 20 April 2010. By a letter of demand dated 7 May 2010 issued pursuant to s. 17 of the Customs Act 1967 ("the Act") the 3rd respondent demanded payment of the short-paid tax of RM226,556.32 within 14 days failing which legal action would be instituted (exh. L5).

- D [7] The Applicant states that due to the absence of any response from the 2nd respondent to its appeal, on 2 June 2010 the applicant filed an appeal to the 1st respondent pursuant to s. 143 of the Act (exh. L6). On 12 July 2010 the 2nd respondent wrote to the applicant rejecting his appeal made through his solicitor.

- E [8] On 20 July 2010 at the hearing before the Tribunal, the 2nd respondent raised a preliminary objection based on reg. 4(1) as the applicant has not paid the tax demanded. The Tribunal agreed with the 2nd respondent and allowed the preliminary objection and ruled that based on the clear provisions of reg. 4(1) the applicant has to pay the short-paid tax first before his appeal could be heard. The applicant contends that the 1st respondent has erred in law.

Contravention Of O. 53

- G [9] Learned Senior Federal Counsel submits that the applicant has used the incorrect mode in commencing proceedings by way of originating motion as this is an application for judicial review to challenge the decision of a public authority. It is submitted that this application ought to have been made *vide* Form 111A as stipulated by O. 53 r. 2(1) of the RHC which provides as follows:

- I 2(1) An application for any of the reliefs specified in paragraph 1 of the Schedule to the Courts of Judicature Act 1964 (other than an application for an order of *habeas corpus*) shall be in Form 111A.

Learned Senior Federal Counsel submits that commencing this action by a mode other than the mode prescribed under O. 53 amounts to an abuse of process. Further it is submitted that by commencing this proceeding by notice of originating motion, there has been an intentional disregard of O. 53 and the strict requirements that need to be adhered to and such intentional disregard of O. 53 is not a mere technical compliance curable under the general provision of O. 1A of the RHC (*Duli Yang Amat Mulia Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj v. Datuk Captain Hamzah Mohd Noor & Another Appeal* [2009] 4 CLJ 329).

[10] For the applicant counsel submits that the non-compliance of O. 53 is a mere irregularity which does not nullify the proceedings as no injustice has been caused to the Attorney General or the respondent. It is submitted that the irregularity is curable under O. 1A of the RHC. Counsel submits that procedural and technical objection must not be allowed to obstruct the process of giving justice (*United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin* [2001] 2 CLJ 31; *Beauford Baru Sdn Bhd v. Gopala Krishnan VK Gopalan* [2002] 3 CLJ 686). Counsel further submits that the failure to use Form 111A as prescribed under O. 53 r. 2(1) is a mere irregularity curable under O. 2 r. 1 of the RHC.

[11] I find that the intitulement in the application states “Dalam perkara mengenai suatu permohonan untuk kebenaran memohon perintah Semakan Kehakiman dibawah A. 53 Kaedah-Kaedah Mahkamah Tinggi 1980”. Despite making this application under O. 53, the applicant has failed to comply with O. 53 r. 2(1) which expressly requires that an application for any of the reliefs specified in para. 1 of the Schedule to the Courts of Judicature Act 1964 (other than an application for an order of *habeas corpus*) “shall be in Form 111A”.

[12] Counsel for the applicant has failed to appreciate that Form 111A is to be used in making the application for judicial review. Form 111B is to be filed upon the applicant obtaining leave and is to be served on all parties affected by the application as stipulated by O. 53 r. 4 as follows:

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A (1) Where leave has been granted under this rule, the applicant shall, within 14 days after the grant of such leave, file a notice in Form 111B.

B (2) Upon extraction of the sealed copy of Form 111B the applicant shall serve a copy of the same together with a copy of the statement and all affidavits in support on all persons directly affected by the application not later than 14 days before the date of hearing specified in the said Form.

C In the case of *Shaari Sahat & Ors v. Tsuritani (Malaysia) Sdn Bhd (Melaka)* [2002] 2 CLJ 53 Low Hop Bing J (as His Lordship then was) dealt with Form 111B as follows:

D What is envisaged in O. 53 r. 4(1) is that after obtaining leave thereunder, the applicant is required to file a notice in Form 111B within 14 days of the grant of such leave. There is no necessity to file a draft copy of Form 111B, as has been done by the applicants herein. This is the root cause of the delay occasioned by the applicants.

E Be that as it may, the next mandatory procedural step to be taken by the applicants has been set out in O. 53 r. 4(2) ie, to obtain the extract copy of Form 111B and serve a copy of the same together with the statement (filed under O. 53 r. 3(2)) and all affidavits in support on all persons directly affected by the application not later than 14 days before the date of hearing specified in the said Form 111B.

F Thus whilst the use of Form 111B arises only after leave has been obtained, the use of Form 111A is essential when making an application under O. 53 as evident from the word “shall” used in r. 2(1). Similarly the word “shall” is used in O. 53 r. 4(2) which His Lordship Low Hop Bing describes as “the next mandatory step”.

I [13] With regard to the submissions by counsel for the applicant that the failure to use Form 111A as prescribed under O. 53 r. 2(1) is a mere irregularity curable under O. 2 r. 1 of the RHC, I refer to the judgment of Abdul Malik Ishak J (as His Lordship then was) in the case of *Malaysian International Merchant Bankers Bhd v. Highland Chocolate And Confectionary Sdn Bhd & Anor* [1997] 1 CLJ 480, wherein His Lordship said that O. 2 r. 1 of the RHC cannot be used to circumvent the express requirements of other rules found in the RHC and there are some irregularities

which may constitute such a fundamental defect in procedure that the court simply may well not exercise its discretion to disregard them. His Lordship said as follows:

I have said elsewhere that the RHC has the force of law and it should not be ignored or overlooked. The observance of the RHC is therefore of considerable importance in litigation and it is the mark of a skilful and experienced lawyer to know how best to employ the rules for the practical and tactical advantage of his client. The general purpose of the rules as exemplified in the RHC is to assist the parties in achieving justice and they are not meant, as some lawyers thought, to be the mechanism for disciplining either the parties or their solicitors. There is a broad spectrum of discretion under the RHC, as well as under the inherent jurisdiction vested in the Court, to waive non-compliance with the rules, or to allow non-compliance to be corrected provided that no prejudice is likely to be caused. Order 2 r. 1 of the RHC, for instance, gives a generous discretion to the Court and this provision may usefully be prayed in aid to cure all manner of defects. But a word of caution need to be incorporated. It should be emphasised, lest lawyers take this judgment as a blanket approval to throw the RHC to the wind, that O. 2 r. 1 of the RHC cannot be used to circumvent the express requirements of other rules found in the RHC. Some kinds of irregularities may constitute such a fundamental defect in procedure that the Court simply may well not exercise its discretion to disregard them; ...

[14] I agree with the learned Senior Federal Counsel that O. 53 imposes stringent conditions or rules (*Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 5 CLJ 865, FC). In *Subramaniam Vythilingam v. The Human Rights Commission of Malaysia (SUHAKAM) & Ors* [2003] 6 CLJ 175, Abdul Malik Ishak J (as His Lordship then was) emphasised that O. 53 contained stringent mandatory safeguards that must be followed. His Lordship said:

It was rightly submitted on behalf of the defendants that by choosing to file enclosure (1), the plaintiff was deliberately attempting to get around the following stringent mandatory requirements and safeguards as enumerated in Order 53 of the RHC:

- (a) the plaintiff would have to apply for leave of the court under Order 53 of the RHC;

A (b) the leave application would have to be filed within 40 days from the date when the grounds of the application first arose; and

(c) the plaintiff would have to serve his leave application on the Attorney-General's Chambers.

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Based on the express provisions of O. 53 r. 2(1) I am unable to agree with counsel for the applicant that resort may be had to O. 1A or O. 2 r.1 to cure the irregularity in this application. To my mind the failure to comply with the clear provisions of O. 53 r. 2(1) is a fundamental procedural defect not curable under O. 1A of the RHC. The procedure adopted in this matter is misconceived. Further by commencing this action by way of originating motion the applicant is evading the mandatory requirements of O. 53 in particular the requirement to first obtain leave.

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Leave

[15] Learned Senior Federal Counsel submits that nowhere in the application is found a prayer seeking the grant of leave as stipulated by O. 53 r. 3(1) as follows:

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(1) No application under this Order shall be made unless leave therefor has been granted in accordance with this rule.

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I agree with the learned Senior Federal Counsel that under O. 53 leave is a pre-condition for judicial review (*Bandar Utama Development Sdn Bhd & Anor v. Lembaga Lebuhraya Malaysia & Anor* [1997] 4 CLJ 725). The requirement for leave for judicial review is strict as it goes to the question of jurisdiction. In *Ravindran P. Muthukrishnan v. Malaysian Examinations Council* [1984] 1 CLJ 23; [1984] 1 CLJ (Rep) 320 which is an application for enlargement of time to file the application for leave, the Supreme Court said *inter alia*:

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Since the Judge rejected the explanation for the delay it follows that the Court had no jurisdiction to hear the application for leave for an order of *certiorari*. Whether the application for an order of *certiorari* had merits or not was irrelevant.

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[16] In the present case the only reference to an application for leave is in the intitulement. In the case of *Cheow Chew Khoon & Teoh Chew Khoon (Yang Berniaga Sebagai Cathay Hotel) v. Abdul Johari bin Abdul Rahman* [1995] 4 CLJ 127 Gopal Sri Ram JCA (as he then was) said:

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... an originating process requiring an intitulement must state, with sufficient particularity, either in its heading or in its body, the statute or rule of court under which the court is being moved; otherwise it would be an embarrassing pleading and may be liable to be struck out, unless sooner amended.

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The purpose of intitulement is to give notice to the other party the nature of the relief sought to avoid the opponent being taken by surprise. However the intitulement is no substitute for a proper pleading for leave which ought to be incorporated in the body of the application.

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[17] The applicant has failed to pray for leave as one of the reliefs sought. I am of the view that an application for judicial review made without first applying for and obtaining leave is defective and grossly irregular and is an abuse of process. The failure to obtain leave results in the court lacking jurisdiction to hear the application for judicial review.

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[18] The word 'shall' as opposed to 'must' or 'may' appear in both O. 53 r. 2(1) and r. 3(1). To my mind this indicates that compliance is a mandatory pre-requisite and failure to comply does not constitute technical non-compliance. I take heed of what His Lordship Zaki Tun Azmi CJ said in the case of *Duli Yang Amat Mulia Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj v. Datuk Captain Hamzah Mohd Noor & Another Appeal (supra)* cited by the learned Senior Federal Counsel. In that case His Lordship said *inter alia* as follows:

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In the context of the Rules of the High Court 1980 the phrase "... technical non-compliance ..." is thus a reference to non-compliance with a rule which is not fundamental or mandatory in nature ... if O. 1A is sought to be invoked whenever a party fails to comply with any provision of the rules, then the whole of the Rules of the High Court 1980 would be rendered useless.

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Thus for the reasons stated above I am of the view that neither O. 1A nor O. 2 r. 1 may be relied upon to cure the defect arising from non-compliance of O. 53 r. 2(1) and O. 53 r. 3(1).

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Alternative Remedy

[19] Learned Senior Federal Counsel submits that the applicant has not exhausted the alternative remedy of appeal provided for under s. 143 of the Act. The appeal has yet to be heard. In the

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- A ‘Sebab Keputusan’ the 1st respondent states that pursuant to reg. 4 of the Customs (Appeal Tribunal) Regulations 2007, the applicant should pay all the duties and taxes which the 2nd respondent has determined to be payable before the applicant’s appeal could be heard. Hence learned Senior Federal Counsel
- B submits that the avenue for appeal is still open. Therefore it is submitted that this application is premature (*Robin Tang Pang Heng @ Muhammad Rizal bin Abdullah (mendakwa sebagai pegawai awam di Penang Turf Club) v. Ketua Pengarah Kesatuan Sekerja Malaysia & 1 Lagi* Rayuan Sivil No: 01(f)-8-2009 (P), FC).

- C [20] Counsel for the applicant relies on the Supreme Court case of *Government of Malaysia & Anor v. Jagdis Singh* [1987] 1 CLJ 451; [1987] CLJ (Rep) 110. In that case it was held that it is not a rigid rule that whenever there is an appeal procedure
- D available to the applicant he should be denied judicial review. Judicial review is always at the discretion of the court but where there are other avenue or remedy open to the applicant it will only be exercised in very exceptional circumstances.

- E [21] In the present case the Act provides for appeal against a decision of the 2nd respondent *vide* s. 143 as follows:

143. Appeal from decision of Director General

- F Any person aggrieved by the decision of the Director General may, except in any matter relating to compound or subsection 128(3), within thirty days from the date of the notification in writing of the decision to him, appeal to the Tribunal, and the decision of the Tribunal shall be final.

- G Section 141M prescribes the jurisdiction of the Tribunal as follows:

141M. Jurisdiction of Tribunal

- H (1) The Tribunal shall have jurisdiction to determine any appeal made under section 143 of the Act, section 47 of the Excise Act 1976, subsection 68(2) of the Sales Tax Act 1972 and subsection 50(2) of the Service Tax Act 1975.

- I Section 141W allows any person aggrieved by the decision of the Tribunal to appeal to the High Court as follows:

141W. Appeal to the High Court

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Any person aggrieved by the decision of the Tribunal may appeal to the High Court on a question of law or of mixed law and fact.

Thus the law has provided specific procedure of appeal for persons aggrieved by a decision of the 2nd respondent or the Tribunal.

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[22] Regulation 4(1) provides as follows:

4. Payment of duties or taxes payable pending appeal

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(1) An appeal shall not be heard unless the appellant has made and submitted all the declarations or returns which he was required to make under this Act, the Excise Act 1976, the Sales Tax Act 1972 or the Service Tax Act 1975 **and has paid all the duties and taxes** which the Director General has determined to be payable by the appellant. (emphasis added)

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Regulation 4(1) clearly stipulates that the applicant has to pay the duties first before his appeal could be heard. Both the applicant and the Tribunal are bound by reg. 4(1). The provision does not confer any discretion on the Tribunal to hear an appeal unless the applicant has complied with the pre-condition. Therefore I find that the Tribunal has not erred in accepting the objection raised by the 2nd respondent and in its decision not to proceed to hear the applicant's appeal.

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[23] The applicant ought to exhaust the appeal process before resort is had to the court. Based on the clear provisions of reg. 4(1) it would be wrong for the court to intervene at this stage as it would tantamount to interfering with the 1st respondent from hearing the appeal pending before it and pre-empting the 1st respondent's right under the law to adjudicate this matter. In the circumstances the issue of exceptional circumstances does not arise.

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[24] For the reasons stated above I agree with the learned Senior Federal Counsel that this application is an abuse of process. The objection is allowed and the application is dismissed with costs of RM1,000 to the Attorney General.

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